NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

PREAMBLE

1.

Sections Affected	Rulemaking Action
R20-4-216	New Section
R20-4-332	New Section
R20-4-403	New Section
R20-4-709	New Section
R20-4-927	New Section
R20-4-1813	New Section
R20-4-1912	New Section

2. **The specific statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. §§ 6-123(1), 6-123(2), 6-123(3)

Implementing statute: A.R.S. §§ 6-110, 6-161, 6-181, 6-478 (B), 6-817(A)(8), 6-905(A)(4), 6-945(A)(3), 6-982(A)(3), 13-1802, 23-1361

3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening, 13 A.A.R. 4332, December 7, 2007

Notice of Proposed Rulemaking, 13.A.A.R. 4292, December 7, 2007

Notice of Termination of Rulemaking, 14 A.A.R. 3182, August 8, 2008

Notice of Rulemaking Docket Opening, 14 A.A.R. 3238, August 15, 2008

4. **<u>The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u>**

Name:	John P. Hudock
Address:	Department of Financial Institutions 2910 North 44th Street, Suite 310 Phoenix, AZ 85018
Telephone Number:	602-255-4421, ext. 167
Fax:	602-381-1225
E-mail:	jhudock@azdfi.com

5. **<u>An explanation of the rules, including the agency's reasons for initiating the rules:</u>**

Executive Summary. This rulemaking is based on A.R.S. §§ 23-1361(E) through (H), enacted in Laws 1986, Ch. 244, § 1. That statute says that employers who report errant employees to DFI under its written rules are not civilly liable for those reports and that the information in the reports is privileged. However, at the present time there is no rule or policy requiring such reports to the Arizona Department of Financial Institutions ("DFI"). As a result, there is no mechanism that triggers the statute's valuable protections for DFI's licensees. These new rules activate the statute's protections so that specific companies under DFI's jurisdiction can self-police, safely communicate among themselves and with DFI about bad actors that harm their businesses and consumers, and enjoy an immunity from civil liability for these information exchanges.

The reporting requirements in the new rules that activate the statute's protections have been urged upon DFI by the industries concerned. They have been active in the drafting of the new rules and are eager for their enactment.

The pertinent subsections of A.R.S. § 23-1361. This statute contains a definition of blacklisting. The companion statute, A.R.S. § 23-1362 defines blacklisting as a crime and classifies it as a class 2 misdemeanor. The two statutes read together clearly establish the legislative purpose to prohibit blacklisting. The most important part of A.R.S. § 23-1361, for purposes of this rulemaking, is contained in subsections (E) and (F), (G) and (H). The first two subsections erect a shield of privilege and immunity for employers generally. The last two recite specific and powerful protections for the benefit of listed financial services industries.

Lawful employment references about reported conduct. The first protection is that certain financial services licensees can lawfully send employment references about reported misconduct to each other under the language of A.R.S. § 23-1361(G). The employment references can advise a prospective employer of an applicant's involvement in any theft, embezzlement, misappropriation or other defalcation that has been reported to DFI as required by rule. It is this ability to send these detailed employment references that actually cuts off an errant employee's ability to drift from one licensee to another, continuing his or her bad conduct.

The second protection is that, under subsection (H), none of the listed businesses shall be civilly liable for providing such an employment reference unless the information is false and provided with knowledge and malice. Neither of these important protections is available to licensees unless DFI's rules require the initial reports of misconduct.

The rules' requirements trigger the statute's protections. The new Sections will trigger A.R.S. § 23-1361's protections because they will require the licensees to report information about any employee whose conduct or suspected conduct, in the employer's judgment, warrants termination. Reportable conduct, under the new Sections, is the type described in either A.R.S. § 23-1361(G) or A.R.S. § 6-161.

The latter statute, which authorizes the Superintendent to remove, suspend, or prohibit an employee from the financial services industry under certain circumstances, describes misconduct in different terms than A.R.S. § 23-1361, but both descriptions are included in the new Sections. The new Sections will work with A.R.S. § 23-1361 to protect employers who make privileged communications to DFI and assist in protecting consumers against misconduct in the listed financial services industries.

The reports. The proposed Sections require licensees to report listed information regarding employees terminated for misconduct, or suspected misconduct. The inclusion of conduct the employer "believes is occurring or has occurred" will protect an employer who lawfully terminates an at-will employee because the employee's conduct raises questions about the customers' or the employers' risks in continued employment.

These new Sections, and the existing statutes, give licensees a safe opportunity to self-police and help to remove the worst actors from the financial services industry. In the past, DFI and licensee-employers have found it difficult to obtain information about employee misconduct. These rules' design will change that.

The new Sections will ease and protect communication with DFI and permit licensees to provide each other with protected information, so that bad actors have less chance to move from one unsuspecting employer to the next. The reporting process will also allow DFI to better use its removal, suspension, and prohibition and powers. Together, the new Sections and the existing statutes will better protect Arizona consumers.

Prohibition or Removal. Since 1973 when the legislature enacted A.R.S. § 6-161, the Superintendent has had the power to remove, suspend, or prohibit the participation of persons from financial institutions and enterprises for having committed certain forms of misconduct. Information reported to DFI under the new Sections is confidential under either A.R.S. § 6-129 or § 6-129.01. That confidentiality protects both employees and employers.

DFI will investigate matters reported under the new Sections and consider whether to seek removal, suspension, or prohibition of the reported employee. DFI's investigations are also confidential under either A.R.S. § 6-129 or § 6-129.01. Any decision to remove, suspend, or prohibit a reported employee will be pursued under A.R.S. § 6-161. Licensees have embraced this use of power for two reasons. First, the text of published removal orders provides guidance about appropriate business conduct. Second, removal of errant employees provides accountability for improper business conduct.

6. **A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study and any analysis of each study, and other supporting material:**

   DFI did not rely on any study as an evaluator or justification for the rules.

7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

   Not applicable

8. **The preliminary summary of the economic, small business, and consumer impact:**

This rulemaking establishes rules that require reports to DFI upon termination of certain licensees' employees for misconduct. Persons who will be directly affected by, bear the cost of, or directly benefit from the rulemaking are:

A. The Department of Financial Institutions

DFI will incur the costs of completing this rulemaking and of putting the new Sections into effect. It expects to receive the offsetting benefits of an open channel of communication with protected licensees about employee misconduct. DFI will then benefit from a regulated industry with a higher quality work force. That will leave DFI better able to protect Arizona consumers.

DFI will also bear the cost of the investigative hours required to process reports of employees terminated for misconduct or suspected misconduct and to make the decision in each case whether to seek removal, suspension, or prohibition of that employee. The benefit to DFI will accrue over the long term in a smaller, better qualified, and law-abiding regulated workforce.

B. Other Public Agencies

There are no known costs or benefits to other public agencies.

C. Private Persons and Businesses Directly Affected

Licensees will bear the compliance cost of compiling and submitting required reports, the cost of periodic supplementation as may be required in individual cases, and the cost of record retention of material reported to DFI. The costs are small because the brief reports can be compiled from documentation generated by the employers' investigations leading to termination. The records of each termination will be retained, so there will be only a slight increased burden to retain the reports.

These same businesses will directly benefit from the ability to assist in removal of malefactors from their work force. The long term effect will be to improve the work force, and to reduce the number of consumer complaints. That effect will, in turn, reduce customer dissatisfaction and litigation defense costs for licensees.

Also, the regulated industries will benefit from a reduction in time spent administering fidelity bond claims. There will be less interaction with sureties' personnel and less interaction with other inquiring parties, including other potential employers and members of the general public. This effect will flow from the industries' ability to refer calls about removed, suspended, or prohibited employees to DFI's web site where Removal, Suspension, or Prohibition Orders will be posted.

D. Consumers

Consumers are not likely to experience increased cost of services due to compliance costs imposed on licensees by these rules because those costs are minimal. But consumers will benefit from an improved, more capable, and more trustworthy work force. Capable, honest employees conduct transactions that deliver benefit to customers as advertised without exposing the customers to financial hazards such as identity theft and mortgage fraud.

E. Private and Public Employment

DFI expects no net negative effect on public or private employment because the number of people removed is, and will be, a small percentage of the total number of people working in the listed industries. For example, there are about 2000 escrow officers in the Arizona market. To date, in the current Superintendent's term DFI has removed 13 escrow officers. That number represents approximately 0.6% of escrow officers in Arizona.

Similarly, there are about 8,000 to 12,000 loan officers in the Arizona market. As of this writing, in the current Superintendent's term DFI has removed 2 loan originators, representing .03% of loan officers.

Overall, the slowing construction and mortgage finance industries have already cost those sectors a number of employees. While that trend will likely continue, it would be difficult if not impossible to accurately predict what fraction of the decrease will be due to economic contraction as opposed to removal actions. DFI believes that most of this effect will be the result of general slowdown in an economy that relies heavily on building, selling, and financing residential real estate.

F. State Revenues

This rulemaking will not change state revenues.

9. <u>The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:</u>

Name:	John P. Hudock
Address:	Department of Financial Institutions 2910 North 44th Street, Suite 310 Phoenix, Arizona 85018
Telephone Number:	602-255-4421, extension 167
Fax Number:	602-381-1225
E-mail:	jhudock@azbanking.com

10. <u>The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:</u>

No oral proceeding is scheduled, but any written comments on DFI's rulemaking may be sent to the agency personnel identified in item 4. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item 4 within 30 days after publication of this notice.

11. <u>Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:</u>

Not applicable

12. <u>Incorporations by reference and their location in the rules:</u>

There is no material incorporated by reference in these rules.

13. <u>The full text of the rules follows:</u>

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 4. DEPARTMENT OF FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-216. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the bank.
2. "Misconduct" means any conduct listed in this subsection that a bank believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
    a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
    b. A willful violation of an order of the superintendent;
    c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
    d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
    e. Any activity described in 12 U. S. C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;
    f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the bank;
    g. A theft, as that term is used in A.R.S. § 13-1802, to include:
        i. An embezzlement;

ii. A misappropriation;

iii. Any other defalcation;

h. Any violation of A.R.S.Title 6, Chapters 1 or 2; or

i. Any violation of 20 A.A.C. 4, Article 2.

B. In the event a bank terminates an employee for misconduct that a bank believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the bank shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the bank at the time the report is made. The bank shall supplement its report within 30 days of the bank learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the bank at the time of the report;
2. The capacity in which the employee worked for the reporting bank;
3. The employee's misconduct;
4. The names of all persons known to the bank that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the bank to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the bank's possession.

D. A bank shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A bank may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a bank destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-214 and the bank's own records retention schedule.

ARTICLE 3. SAVINGS AND LOAN ASSOCIATIONS

R20-4-332. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the savings and loan association;
2. "Misconduct" means any conduct listed in this subsection that a savings and loan association believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
    a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
    b. A willful violation of an order of the superintendent;
    c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
    d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;

e. Any activity described in 12 U.S.C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;

f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the savings and loan association;

g. A theft, as that term is used in A.R.S. § 13-1802, to include:

i. An embezzlement;

ii. A misappropriation;

iii. Any other defalcation;

h. Any violation of A.R.S. Title 6, Chapter 3; or

i. Any violation of 20 A.A.C. 4, Article 3.

B. In the event a savings and loan association terminates an employee for misconduct that a savings and loan association believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the savings and loan association shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the savings and loan association at the time the report is made. The savings and loan association shall supplement its report within 30 days of the savings and loan association learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the savings and loan association at the time of the report;

2. The capacity in which the employee worked for the reporting savings and loan association;

3. The employee's misconduct;

4. The names of all persons known to the savings and loan association that have been, or may have been, injured or damaged by the reported misconduct;

5. The employee's last known business and residence addresses;

6. The names of all persons known, to the savings and loan association, to have personal knowledge of the reported misconduct; and

7. A description of all records evidencing the reported misconduct in the savings and loan association's possession.

D. A savings and loan association shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A savings and loan association may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a savings and loan association destroy records of reported misconduct described under subsection (C)(7) except in compliance with State law and the savings and loan association's own records retention schedule.

ARTICLE 4. CREDIT UNIONS

R20-4-403. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the credit union;

2. "Misconduct" means any conduct listed in this subsection that a credit union believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:

   a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;

   b. A willful violation of an order of the superintendent;

   c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;

   d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;

   e. Any activity described in 12 U. S. C. 1818(e)(1). For purposes of this subsection, any references in the federal statute to the appropriate federal banking agency are to the superintendent;

   f. Any act, practice, or transaction that in any way would jeopardize the safety and soundness of the credit union;

   g. A theft, as that term is used in A.R.S. § 13-1802, to include:

      i. An embezzlement;

      ii. A misappropriation;

      iii. Any other defalcation;

   h. Any violation of A.R.S. Title 6, Chapter 4; or

   i. Any violation of 20, A.A.C. 4, Article 4.

B. In the event a credit union terminates an employee for misconduct that a credit union believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the credit union shall report the employee's misconduct to the Department within 30 days of employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the credit union at the time the report is made. The credit union shall supplement its report within 30 days of the credit union learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the credit union at the time of the report;
2. The capacity in which the employee worked for the reporting credit union;
3. The employee's misconduct;
4. The names of all persons known to the credit union that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the credit union to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the credit union's possession.

D. A credit union shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A credit union may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a credit union destroy records of reported misconduct described under subsection (C)(7) except in compliance with state law and the credit union's own records retention schedule.

ARTICLE 7. ESCROW AGENTS

R20-4-709. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the escrow agent.
2. "Misconduct" means any conduct listed in this subsection that an escrow agent believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
    a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
    b. A willful violation of an order of the superintendent;
    c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
    d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
    e. A theft, as that term is used in A.R.S. § 13-1802, to include:
        i. An embezzlement;
        ii. A misappropriation;
        iii. Any other defalcation;

f. Any violation of A.R.S. Title 6, Chapter 7; or

g. Any violation of 20 A.A.C. 4, Article 7.

B. In the event an escrow agent terminates an employee for misconduct that an escrow agent believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the escrow agent shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the escrow agent at the time the report is made. The escrow agent shall supplement its report within 30 days of the escrow agent learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the escrow agent at the time of the report;
2. The capacity in which the employee worked for the reporting escrow agent;
3. The employee's misconduct;
4. The names of all persons known to the escrow agent that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the escrow agent to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the escrow agent's possession.

D. An escrow agent shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. An escrow agent may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall an escrow agent destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-703 and the escrow agent's own records retention schedule.

ARTICLE 9. MORTGAGE BROKERS

R20-4-927. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage broker;
2. "Misconduct" means any conduct listed in this subsection that a mortgage broker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:
    a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;
    b. A willful violation of an order of the superintendent;
    c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;
    d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;
    e. A theft, as that term is used in A.R.S. § 13-1802, to include:

i. An embezzlement;

ii. A misappropriation;

iii. Any other defalcation;

f. Any violation of A.R.S. Title 6, chapter 9, article 1; or

g. Any violation of 20 A.A.C. 4, Article 9.

B. In the event a mortgage broker terminates an employee for misconduct that a mortgage broker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the mortgage broker shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the mortgage broker at the time the report is made. The mortgage broker shall supplement its report within 30 days of the mortgage broker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage broker at the time of the report;

2. The capacity in which the employee worked for the reporting mortgage broker;

3. The employee's misconduct;

4. The names of all persons known to the mortgage broker that have been, or may have been, injured or damaged by the reported misconduct;

5. The employee's last known business and residence addresses;

6. The names of all persons known to the mortgage broker to have personal knowledge of the reported misconduct; and

7. A description of all records evidencing the reported misconduct in the mortgage broker's possession.

D. A mortgage broker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A mortgage broker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a mortgage broker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-917 and the mortgage broker's own records retention schedule.

ARTICLE 18. MORTGAGE BANKERS

R20-4-1813. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the mortgage banker;

2. "Misconduct" means any conduct listed in this subsection that a mortgage banker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:

   a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;

   b. A willful violation of an order of the superintendent;

c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;

d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;

e. A theft, as that term is used in A.R.S. § 13-1802, to include:

i. An embezzlement;

ii. A misappropriation;

iii. Any other defalcation;

f. Any violation of A.R.S. Title 6, Chapter 9, Article 2; or

g. Any violation of 20 A.A.C. 4, Article 18.

B. In the event a mortgage banker terminates an employee for misconduct that a mortgage banker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the mortgage banker at the time the report is made. The mortgage banker shall supplement its report within 30 days of the mortgage banker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the mortgage banker at the time of the report;

2. The capacity in which the employee worked for the reporting mortgage banker;

3. The employee's misconduct;

4. The names of all persons known to the mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;

5. The employee's last known business and residence addresses;

6. The names of all persons known to the mortgage banker to have personal knowledge of the reported misconduct; and

7. A description of all records evidencing the reported misconduct in the mortgage banker's possession.

D. A mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A mortgage banker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a mortgage banker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-1806 and the mortgage banker's own records retention schedule.

ARTICLE 19. COMMERCIAL MORTGAGE BANKERS

R20-4-1912. Reports of Employee Misconduct

A. As the term is used in this Section:

1. "Employee" has the meaning stated in R20-4-102 and also includes directors, officers, agents, and other persons participating in the conduct of the affairs of the commercial mortgage banker.

2. "Misconduct" means any conduct listed in this subsection that a commercial mortgage banker believes is occurring or has occurred in Arizona or harms an Arizona resident, as follows:

   a. Any act, omission, or practice in any business transaction that demonstrates personal dishonesty;

   b. A willful violation of an order of the superintendent;

   c. A refusal to testify or produce records in response to a subpoena issued by the superintendent;

   d. A conviction of a crime, an essential element of which is fraud, misrepresentation, or deceit;

   e. A theft, as that term is used in A.R.S. § 13-1802, to include:

      i. An embezzlement;

      ii. A misappropriation;

      iii. Any other defalcation;

   f. Any violation of A.R.S.Title 6, Chapter 9, Article 3; or

   g. Any violation of Title 20 A.A.C. 4, Article 19.

B. In the event a commercial mortgage banker terminates an employee for misconduct that a commercial mortgage banker believes is occurring or has occurred, as misconduct is defined in subsection (A)(2), the commercial mortgage banker shall report the employee's misconduct to the Department within 30 days of the employee's termination.

C. The initial report required by subsection (B) shall contain all the information specified in this subsection and known to the commercial mortgage banker at the time the report is made. The commercial mortgage banker shall supplement its report within 30 days of the commercial mortgage banker learning new information.

1. The employee's name and other identifying information including any of the employee's fictitious names or aliases known to the commercial mortgage banker at the time of the report;
2. The capacity in which the employee worked for the reporting commercial mortgage banker;
3. The employee's misconduct;
4. The names of all persons known to the commercial mortgage banker that have been, or may have been, injured or damaged by the reported misconduct;
5. The employee's last known business and residence addresses;
6. The names of all persons known to the commercial mortgage banker to have personal knowledge of the reported misconduct; and
7. A description of all records evidencing the reported misconduct in the commercial mortgage banker's possession.

D. A commercial mortgage banker shall retain all records of reported misconduct described under subsection (C)(7) for 5 years. A commercial mortgage banker may request permission to destroy those records earlier, and the Department's consent shall not be unreasonably withheld. In no event shall a commercial mortgage banker destroy records of reported misconduct described under subsection (C)(7) except in compliance with R20-4-1907 and the commercial mortgage banker's own records retention schedule.